

ARGUMENT

REJECTION UNDER 35 USC § 103

The examiner rejected claims 3 and 4 under 35 USC §103(a) as unpatentable over Schlarb in view of Mendelsohn and Emura and further in view of Ellis (US 2005/0235323). The applicant respectfully disagrees.

Claim 3 covers an embodiment that illustrates an important distinction over Emura. In claim 3, a change channel request is displayed if the user is currently viewing a different channel at the time a program has been selected for recording. If the user responds positively to change the channel, then the status of the content delivery path is considered available. However, if the user responds negatively to change the channel, then the status of the content delivery path is considered not available and a different transmission time is selected for the program.

If Emura were modified in view of Ellis, the resulting receiver would operate as taught by Ellis. That is, if a user were busy watching a particular channel at the transmission time of a selected program, and the user responds negatively to change the channel, then the receiver would simply not record the selected program as taught by Ellis (see figure 3b blocks 312 and 314).

The teaching to select a different transmission time for a selected program if the user is busy watching a particular channel comes only from applicant's disclosure and not from Emura or Ellis. The rejection should therefore be withdrawn since applicant's disclosure cannot be used as prior art against his own claims. (In re Stencil 828 F.2d 751; 4 U.S.P.Q.2D (BNA) 1071 (1987)).

CONCLUSION

Withdrawal of the rejections is respectfully requested.

To the extent necessary, a petition for an extension of time under 37 C.F.R. 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account No. 23-1209, and please credit any excess fees to such deposit account.

Respectfully submitted,

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By: /Howard H. Sheerin/
Howard H. Sheerin
Reg. No. 37,938

WESTERN DIGITAL TECHNOLOGIES, INC.
20511 Lake Forest Drive
Lake Forest, CA 92630
Tel.: (949) 672-7000
Fax: (949) 672-6604